

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Develop Additional
Methods to Implement the California Renewables
Portfolio Standard Program.

Rulemaking 06-02-012
(Filed February 16, 2006)

**REPLY COMMENTS OF THE ALLIANCE FOR RETAIL ENERGY MARKETS
AND THE WESTERN POWER TRADING FORUM
ON THE PROPOSED DECISION OF ALJ SIMON**

Daniel W. Douglass
Gregory S.G. Klatt
DOUGLASS & LIDDELL
21700 Oxnard Street, Suite 1030
Woodland Hills, California 91367
Telephone: (818) 961-3001
Facsimile: (818) 961-3004
Email: douglass@energyattorney.com

Attorneys for the
ALLIANCE FOR RETAIL ENERGY MARKETS
and the
WESTERN POWER TRADING FORUM

April 20, 2009

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	REPLY COMMENTS	2
A.	The Commission Should Not Further Delay Its Decision Authorizing TRECs.	2
B.	The Proposed TREC Usage Should Not Apply to ESPs.	2
C.	The January 1, 2008 Cut-Off Date for TREC Eligibility Is Reasonable.	4
III.	CONCLUSION.....	5

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Develop Additional
Methods to Implement the California Renewables
Portfolio Standard Program.

Rulemaking 06-02-012
(Filed February 16, 2006)

**COMMENTS OF THE ALLIANCE FOR RETAIL ENERGY MARKETS
AND THE WESTERN POWER TRADING FORUM
ON THE PROPOSED DECISION OF ALJ SIMON**

In accordance with Article 15 of the Commission's Rules of Practice and Procedure, the Alliance for Retail Energy Markets ("AReM")¹ and the Western Power Trading Forum ("WPTF")² respectfully submit to the California Public Utilities Commission ("Commission") these joint reply comments on the Proposed Decision ("PD") of Administrative Law Judge ("ALJ") Anne E. Simon issued on March 26, 2009, entitled *Decision Authorizing Use of Renewable Energy Credits for Compliance With the Renewables Portfolio Standard*.

I. INTRODUCTION

In these reply comments, AReM and WPTF respond to the recommendations of certain parties to further delay a decision authorizing the use of tradable renewable energy credits ("TREC") for compliance with the Renewables Portfolio Standard ("RPS") and/or extend the PD's proposed TREC usage limit to electric service providers ("ESPs") and other load-serving entities ("LSEs") besides investor-owned utilities ("IOUs"). As discussed below, there is no compelling reason for the Commission not to authorize TRECs now. Moreover, while AReM and WPTF reiterate their objections to imposing limits on the use of TRECs on any party, the PD is on solid ground in excluding ESPs from the proposed TREC usage limit.

¹ AReM is a California mutual benefit corporation formed by electric service providers that are active in California's direct access market. The positions taken in this filing represent the views of AReM and its members but not necessarily the affiliates of its members with respect to the issues addressed herein.

² WPTF is a California non-profit, mutual benefit corporation. It is a broadly based membership organization dedicated to enhancing competition in Western electric markets in order to reduce the cost of electricity to consumers throughout the region while maintaining the current high level of system reliability. WPTF actions are focused on supporting development of competitive electricity markets throughout the region and developing uniform operating rules to facilitate transactions among market participants.

II. REPLY COMMENTS

A. The Commission Should Not Further Delay Its Decision Authorizing TRECs.

In its opening comments, The Utility Reform Network (“TURN”) recommends that the Commission “refrain from adopting tradable REC rules until the legislature has settled on an applicable statutory framework.”³ Similarly, the Division of Ratepayer Advocates (“DRA”) recommends that the Commission wait “until the concerns with the proposed design of a market for tradable energy credits can be better addressed and resolved.”⁴ However, the Legislature has already authorized the Commission to allow the use of TRECs for RPS compliance, subject only to the condition that a REC tracking and verification system is in place. That condition has been met, and LSEs need access to TRECs now to facilitate compliance with their RPS obligations. As the PD recognizes, the evidence in this proceeding clearly demonstrates that the benefits from allowing the use of TRECs for RPS compliance will significantly outweigh the potential harms. Furthermore, as TURN acknowledges, it is uncertain what amendments to the RPS statute relating to TRECs, if any, will come out of the Legislature this year. If the RPS statute is later amended to direct the Commission to impose limits on TREC usage that differ from that adopted in the PD, the Commission can and will simply implement the relevant provisions of the statute. Accordingly, there is no valid, much less compelling reason for the Commission to further delay its decision authorizing the use of TRECs for RPS compliance.

B. The Proposed TREC Usage Limit Should Not Apply to ESPs.

In its opening comments, TURN recommends that the PD’s proposed limit on the IOUs’ use of TRECs for RPS compliance should be extended to all LSEs.⁵ Southern California Edison Company (“SCE”) and Pacific Gas and Electric Company (“PG&E”), while opposed to the PD’s proposed TREC usage limit, recommend that if any such limit is adopted it should also apply to ESPs and other types of LSEs.⁶ The Union of Concerned Scientists (“UCS”) recommends that the Commission should impose a limit on the TREC usage of ESPs of 50% of their annual

³ TURN Opening Comments, p. 2.

⁴ DRA Opening Comments, p. 2.

⁵ TURN Opening Comments, p. 3.

⁶ SCE Opening Comments, pp. 5-6; PG&E Opening Comments, p. 5.

procurement targets (“APTs”).⁷ None of these parties, however, make a compelling argument for extending the proposed TREC usage limit to ESPs.

TURN and SCE argue that the Commission is required by law to apply the same TREC usage limits to all LSEs, citing Public Utilities Code § 399.12(g)(3), which provides that the participation of ESPs in the RPS program shall be “subject to the same terms and conditions applicable to an electrical corporation pursuant to this article.”⁸ Similarly, PG&E argues that it would be “discriminatory” to not apply the PD’s proposed TREC usage limit to ESPs. However, the Commission determined in Decision (“D.”) 05-11-025 that “The Legislature’s request that we determine the ‘manner’ in which ESPs participate certainly indicates that the Commission has some discretion to make different requirements of ESPs than utilities.”⁹ In the same decision, the Commission went on to conclude:

This Commission has less overall control over how ESPs and CCAs operate than we do over how utilities operate. Also, to the extent we consider ESP and CCA operations, our concerns about their operations differ somewhat from our concerns about the operations of the investor-owned utilities. In the context of the RPS program, our primary concern is to ensure that ESPs and CCAs do in fact reach the goal of 20% renewable energy by 2010. [Footnote omitted.] We are, however, somewhat less concerned about the details of how they get there.

Therefore, we do not believe it is reasonable to require these entities to be subject to the exact same steps for RPS implementation purposes as the utilities we fully regulate.¹⁰

With respect to the proposed TREC usage limit, the PD states, “This usage limitation is fundamentally a protection for California utility ratepayers.”¹¹ In determining that the TREC usage limit should not be extended to ESPs and CCAs, the PD correctly observes:

[T]his Commission has different responsibilities with respect to utilities and ESPs and CCAs. This Commission does not set the rates of ESPs or CCAs and has no responsibility to ensure that

⁷ UCS Opening Comments, p. 4.

⁸ SCE Opening Comments, pp. 4-5; TURN Opening Comments, p. 3. SCE also cites similar language in Pub. Util. Code § 380(e).

⁹ D.05-11-025, p. 5.

¹⁰ *Id.*, pp. 13-14.

¹¹ PD, p. 30.

their charges to their customers are just and reasonable. If an ESP or CCA chooses to take the price risk associated with using TRECs rather than fixed-price bundled contracts for RPS compliance, that is a business decision whose consequences are borne solely by the ESP or CCA and its customers.

Moreover, ESPs, much like the small IOUs which the PD also determines should not be subject to the TREC usage limit, have more limited options than the IOUs in terms of the availability of reasonably priced RPS-eligible resources.¹² Indeed, as the PD correctly observes, the IOUs “have the largest array of RPS procurement options and resources, enabling them to have greater flexibility incorporating the TREC limitation of 5% of APT into their procurement planning.”¹³

For this and the other reasons set forth in the PD, it is reasonable to limit application of the PD’s proposed TREC usage limit to the IOUs. Indeed, given the differences in how the IOUs and ESPs are situated in terms of their RPS compliance options, fairness dictates that ESPs not be burdened with the additional complications for their RPS compliance that would result from extending the TREC usage limit to such entities, whether it is 5% of APT or 50% as UCS recommends for ESPs. Thus, while AReM and WPTF would strongly prefer the decision be modified to remove any limitations on the use of TRECs for the reasons cited in their joint opening comments, the PD is on solid ground in differentiating between the IOUs on the one hand, and ESPs and other types of LSEs on the other, in terms of limiting the use of TRECs for RPS compliance.¹⁴

C. The January 1, 2008 Cut-Off Date for TREC Eligibility Is Reasonable.

In their opening comments, UCS and TURN argue that the cut-off date for TREC eligibility should be January 1, 2009, rather than the January 1, 2008 date set forth in the PD. In AReM and WPTF’s view, there is no compelling reason to establish any cut-off date for TREC eligibility; as long as TRECs are registered the Western Renewable Energy Generation Information System, they should be eligible to count toward LSEs’ RPS obligations. That being said, AReM and WPTF can accept the January 1, 2008 cut-off date as a reasonable compromise.

¹² PD, p. 30.

¹³ PD, p. 31.

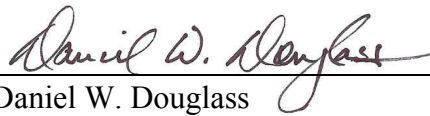
¹⁴ For the same reasons, the Commission would be on solid ground if it excluded ESPs from SCE’s proposed minimum quota requirement for TRECs if it were adopted.

That date ensures any generators that have not already sold all the RECs produced by their facility in the recent past will have a market for those RECs, thereby providing revenues that may be necessary to keep their facility in operation.

III. CONCLUSION

For the above reasons, AReM and WPTF continue to urge the Commission to adopt a decision that does not impose limitation on the use of TRECs, but, if limitations are imposed, AReM and WPTF urge the Commission not to extend any TREC usage limits to ESPs. In addition, the Commission should not adopt a cut-off date for TREC eligibility later than January 1, 2008. AReM and WPTF thank ALJ Simon and the Commission for their consideration of these reply comments.

Respectfully submitted,



Daniel W. Douglass
Gregory S.G. Klatt
DOUGLASS & LIDDELL
21700 Oxnard Street, Suite 1030
Woodland Hills, California 91367
Telephone: (818) 961-3001
Facsimile: (818) 961-3004
Email: douglass@energyattorney.com

Attorneys for the
ALLIANCE FOR RETAIL ENERGY MARKETS
and the
WESTERN POWER TRADING FORUM

April 20, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of *Reply Comments of the Alliance for Retail Energy Markets and the Western Power Trading Forum on the Proposed Decision of ALJ Simon* on all parties of record in proceeding **R.06-02-012** by serving an electronic copy on their email addresses of record and by mailing a properly addressed copy by first-class mail with postage prepaid to each party for whom an email address is not available.

Executed on April 20, 2009, at Woodland Hills, California.



Michelle Dangott

SERVICE LIST – R.06-02-012

ab1@cpuc.ca.gov
abb@eslawfirm.com
abiecunasjp@bv.com
achang@nrdc.org
ACRoma@hhlaw.com
aeg@cpuc.ca.gov
aes@cpuc.ca.gov
ahaubenstock@brightsourceenergy.com
alex.kang@itron.com
alho@pge.com
amber@iepa.com
amsmith@sempra.com
anders.glader@iberdrolausa.com
andy.vanhorn@vhcenergy.com
aorchar@smud.org
arno@recurrentenergy.com
artrivera@comcast.net
as2@cpuc.ca.gov
Audra.Hartmann@Dynegy.com
b.barnes@cleantechamerica.com
bbaker@summitblue.com
bbeebe@smud.org
bcragg@goodinmacbride.com
bdicapo@caiso.com
bds@cpuc.ca.gov
bepstein@fablaw.com
bernardo@braunlegal.com
beth@beth411.com
bfinkelstein@turn.org
billm@enxco.com
bjnese@stoel.com
blaising@braunlegal.com
bobgex@dwt.com
bpurewal@water.ca.gov
brad@mp2capital.com
brbarkovich@earthlink.net
brenda.lemay@horizonwind.com
brian@banyansec.com
bsb@eslawfirm.com
bwm@cpuc.ca.gov
californiadockets@pacificorp.com
case.admin@sce.com
Cassandra.sweet@dowjones.com
castille@landsenergy.com
cathy.karlstad@sce.com
cbreidenich@yahoo.com
cchen@ucsusa.org
cem@newsdata.com
centralfiles@semprautilities.com
chad_dickason@soleonenergy.com
claufenb@energy.state.ca.us
clyde.murley@comcast.net

cmkehrein@ems-ca.com
cmmw@pge.com
cni@cpuc.ca.gov
cponds@ci.chula-vista.ca.us
cpuccases@pge.com
cpucdockets@keyesandfox.com
cpucrulings@navigantconsulting.com
craig.lewis@greenvolts.com
crmd@pge.com
csilveira@nvenergy.com
csmoots@perkinscoie.com
css@cpuc.ca.gov
csteen@bakerlaw.com
cswollums@midamerican.com
ctorchia@chadbourn.com
cwooten@lumenxconsulting.com
Cynthia.A.Fonner@constellation.com
daking@sempra.com
Dan.adler@calcef.org
dan@energysmarthomes.net
david.oliver@navigantconsulting.com
David.Townley@townleytech.com
davido@mid.org
dbp@cpuc.ca.gov
dbrooks@nvenergy.com
dcarroll@downeybrand.com
dcover@esassoc.com
deb@a-klaw.com
demorse@omsoft.com
dennis@ddecuir.com
derek@evomarkets.com
dgrandy@caonsitegen.com
dgulino@ridgewoodpower.com
dhecht@sempratrading.com
dhuard@manatt.com
Diane.Fellman@nexteraenergy.com
diarmuid@greenwoodenv.com
dietrichlaw2@earthlink.net
dkk@eslawfirm.com
dmdubson@stoel.com
dniehaus@semprautilities.com
dorth@krcd.org
dot@cpuc.ca.gov
douglass@energyattorney.com
dsaul@pacificsolar.net
dseperas@calpine.com
dsh@cpuc.ca.gov
dws@r-c-s-inc.com
ECL8@pge.com
ed.smeloff@sunpowercorp.com
ej_wright@oxy.com
ek@a-klaw.com

eks@cpuc.ca.gov
ELL5@pge.com
email@semprasolutions.com
emello@sppc.com
e-recipient@caiso.com
eric.cherniss@gmail.com
esison@smud.org
evk1@pge.com
filings@a-klaw.com
fortlieb@sandiego.gov
fred.wellington@navigantconsulting.com
garson_knapp@fpl.com
gary.allen@sce.com
gbarkalo@energy.state.ca.us
gcollord@arb.ca.gov
gcooper@cpv.com
glemei@resource-solutions.org
GloriaB@anzaelectric.org
glw@eslawfirm.com
gmorris@emf.net
gpetlin@3degreesinc.com
grosenblum@caiso.com
gtd@cpuc.ca.gov
GXL2@pge.com
hal@rwitz.net
harveyederpspc@hotmail.com
hcronin@water.ca.gov
holly@ausra.com
hrait@energy.state.ca.us
jackmack@suesec.com
janice@strategenconsulting.com
janreid@coastecon.com
jansell@alternitywindpower.com
jarmstrong@goodinmacbride.com
jbarnes@summitblue.com
jdalessi@navigantconsulting.com
jdh@eslawfirm.com
jeffgray@dwt.com
jennifer.chamberlin@directenergy.com
jeremy.weinstein@pacificorp.com
jf2@cpuc.ca.gov
jfleshma@energy.state.ca.us
jgreco@terra-genpower.com
jholmes@emi1.com
jjg@eslawfirm.com
jkarp@winston.com
jkarp@winston.com
jleslie@luce.com
jluckhardt@downeybrand.com
jm3@cpuc.ca.gov
jmcfarland@treasurer.ca.gov
jmcMahon@crai.com

jody_london_consulting@earthlink.net
Joe.Langenberg@gmail.com
joe.paul@dynegy.com
johnrredding@earthlink.net
Joni.Templeton@sce.com
jordan.white@pacificorp.com
joshdavidson@dwt.com
joshdavidson@dwt.com
joyw@mid.org
jpross@sungevity.com
jsanders@caiso.com
jscancarelli@flk.com
jsqueri@gmssr.com
judith.kim@walmartlegal.com
judypau@dwt.com
jweil@aglet.org
jwright@semprautilities.com
karen@klindh.com
kduzel@navigantconsulting.com
keith.mccrea@sablaw.com
keithwhite@earthlink.net
ken.baker@wal-mart.com
kenneth.swain@navigantconsulting.com
kerry.eden@ci.corona.ca.us
kerry.hattevik@nrgenergy.com
kevin.lynch@iberdrolausa.com
kevin@solardevelop.com
kfox@keyesandfox.com
khassan@sempra.com
kjsimonsen@ems-ca.com
klatt@energyattorney.com
kmills@cbbf.com
koconnor@winston.com
kowalewskia@calpine.com
kpp@cpuc.ca.gov
kswitzer@gswater.com
kswitzer@gswater.com
kyle.l.davis@pacificorp.com
kzocchet@energy.state.ca.us
lfavret@3degreesinc.com
lgonzale@energy.state.ca.us
liddell@energyattorney.com
linda.sherif@calpine.com
lisa_weinzimer@platts.com
lmh@eslawfirm.com
lmi@cpuc.ca.gov
lpark@navigantconsulting.com
lw@house@innercite.com
lwisland@ucsusa.org
lynn@lmaconsulting.com
mannm@dteenergy.com
marcel@turn.org
marcie.milner@shell.com
mary@solutionsforutilities.com

MASullivan@hhlaw.com
matthew@turn.org
mclaughlin@braunlegal.com
mday@goodinmacbride.com
mdeange@smud.org
mdjoseph@adamsbroadwell.com
mflorio@turn.org
mhyams@sflower.org
michael@mp2capital.com
michaelgilmore@inlandenergy.com
mirwin@edisonmission.com
mjh@cpuc.ca.gov
mjs@cpuc.ca.gov
mmazur@3PhasesRenewables.com
MMCL@pge.com
mniroula@water.ca.gov
mpa@a-klaw.com
mpr-ca@coolearthsolar.com
MRGG@pge.com
mrl@cpuc.ca.gov
mrw@mrwassoc.com
mshames@ucan.org
mtmcewan@gmail.com
nao@cpuc.ca.gov
ndesnoo@ci.berkeley.ca.us
nellie.tong@us.kema.com
nes@a-klaw.com
nlong@nrdc.org
nlr@cpuc.ca.gov
nmurray@natureener.net
nrader@calwea.org
nsuetake@turn.org
nxk2@pge.com
obartho@smud.org
paulfenn@local.org
pbrehm@infiniacorp.com
pepper@cleanpowermarkets.com
perlism@dicksteinshapiro.com
phanschen@mofo.com
philha@astound.net
pletkarj@bv.com
pmaxwell@navigantconsulting.com
porter@exeterassociates.com
psd@cpuc.ca.gov
pssed@adelphia.net
pssed@adelphia.net
pstoner@lgc.org
ralf1241a@cs.com
ramonag@ebmud.com
rblee@bakerlaw.com
regrelcpuccases@pge.com
rhassan@fbr.com
rhwisner@lbl.gov
rick_noger@praxair.com

rick_noger@praxair.com
rkeen@manatt.com
rkmoore@gswater.com
rlauckhart@globalenergy.com
rmccann@umich.edu
rmccoy@ercot.com
rmiller@energy.state.ca.us
rmm@cpuc.ca.gov
ron.cerniglia@directenergy.com
rprince@semprautilities.com
rresch@seia.org
rroth@smud.org
rsa@a-klaw.com
rschmidt@bartlells.com
rwalthers@pacbell.net
rwinthrop@pilotpowergroup.com
saeed.farokhpay@ferc.gov
salleyoo@dwt.com
sas@a-klaw.com
sberlin@mccarthyllaw.com
sbeserra@sbcglobal.net
sdhilton@stoel.com
sean.beatty@mirant.com
SEHC@pge.com
sfinnerty@cpv.com
sho@ogrady.us
sls@a-klaw.com
smk@cpuc.ca.gov
snulter@ethree.com
spauker@wsgr.com
srovetti@sflower.org
ssmyers@att.net
stephen.morrison@sfgov.org
steve@energyinnovations.com
stevegreenwald@dwt.com
steven.schleimer@barclayscapital.com
steven@iepa.com
susan.munves@smgov.net
svn@cpuc.ca.gov
tcorr@sempra.com
tdarton@pilotpowergroup.com
tdarton@pilotpowergroup.com
tdillard@sppc.com
thamilton@qualitybuilt.com
theresa.mueller@sfgov.org
thunt@cecmail.org
tjaffe@energybusinessconsultants.com
tkaushik@manatt.com
tmartin@alternitywindpower.com
tobinjm@sbcbglobal.net
Tom.Elgie@powerex.com
tomb@crossborderenergy.com
tomk@mid.org
tpomales@arb.ca.gov

troberts@sempira.com
tzentai@summitblue.com
vjw3@pge.com
vsuravarapu@cera.com
vwood@smud.org

wblattner@semprautilities.com
wbooth@booth-law.com
whgolove@chevron.com
william.v.walsh@sce.com

wplaxico@heliosenergy.us
wvm3@pge.com
wwester@smud.org
ygross@sempraglobal.com